

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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RICHARD E. RUCKER, CLERK
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D.C.

STATE OF TENNESSEE, ex rel. ROBERT
E. COOPER, JR., Attorney General &
Reporter,

Plaintiff,

v.

No. 07C-3365-III

EXPYFI, LLC, a Georgia limited liability
company, doing business as www.expyfi.com,
CREDITMAX FINANCIAL, LLC, a Georgia
limited liability company, CREDIT PHD., INC.,
a Georgia nonprofit corporation, and
ANTHONY "TONY" IRVING THOMAS aka
ANTHONY J. THOMPSON,
individually and doing business as
EXPYFI, LLC, CREDITMAX FINANCIAL,
LLC, CREDIT PHD., INC., and
www.expyfi.com,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
STATE'S MOTION FOR STATUTORY TEMPORARY INJUNCTION

The State of Tennessee has initiated a civil law enforcement proceeding brought by the Attorney General of the State of Tennessee ("Attorney General" or "State") pursuant to the Tennessee Consumer Protection Act of 1977¹ ("TCPA"), the Tennessee Credit Services Businesses Act,² the Attorney General's general statutory authority,³ and the Attorney General's

¹ Tenn. Code Ann. § 47-18-101 *et seq.*

² Tenn. Code Ann. § 47-18-1001 *et seq.*

³ Tenn. Code Ann. § 8-6-109.

authority at common law to secure injunctive and other equitable relief prohibiting Defendants from engaging in credit services businesses while not bonded or other unfair and deceptive acts and practices.

Defendants in this case have engaged in unlawful acts and practices in Tennessee by offering credit services to Tennessee consumers via signs, the telephone, the Internet, and seminars while not bonded with the State of Tennessee as statutorily required. This scheme has harmed Tennessee consumers who purchased credit services from an unbonded entity. This court has the ability to take the steps necessary to protect past, present, and future consumers by issuing a statutory temporary injunction against all Defendants. For the reasons more fully stated below, a statutory temporary injunction should issue pending a full hearing on this matter.

PARTIES

Plaintiff, State of Tennessee, by and through its Attorney General and Reporter, Robert E. Cooper, Jr., is charged with enforcing the Tennessee Consumer Protection Act of 1977 (“TCPA”), Tenn. Code Ann. § 47-18-101 *et seq.*, which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce, and the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001 *et seq.* Under Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA and to secure such equitable and other relief as may be appropriate in each case. Under Tenn. Code Ann. § 47-18-1010(b), the Attorney General may initiate civil law enforcement proceedings under the TCPA if he has reason to believe any credit services business, or any salesperson, agent, representative, or independent contractor acting on behalf of a credit services business, has violated any provision of the Tennessee Credit Services Businesses Act.

Upon information and belief, Defendant Anthony “Tony” Irving Thomas aka Anthony J. Thompson (“Defendant Thomas”), is an individual who was last known to reside at 3560 Imperial Hill Drive, Snellville, GA 30039. Upon information and belief, Defendant Thomas’s mortgage holder foreclosed on the house at 3560 Imperial Hill Drive, Snellville, GA 30039 in March 2007. Defendant Thomas has also listed P.O. Box 390591, Snellville, Georgia 30039 as his address on corporate documents. Defendant Thomas is the sole organizer and registered agent of ExpyFi, LLC, also doing business as www.expyfi.com (“Defendant ExpyFi”). Defendant Thomas is the registered agent of CreditMax Financial, LLC (“Defendant CreditMax”). Defendant Thomas is the sole incorporator, chief executive officer, and registered agent of Credit Phd., Inc. (“Defendant Credit Phd.”). At all times relevant hereto, Defendant Thomas has actively participated in the operation, sales, advertising and promotion of Defendants ExpyFi, CreditMax, and Credit Phd. Further, Defendant Thomas, acting alone or in concert with others, has formulated, directed, controlled, has or has had the authority to control or has actively participated in the acts and practices at issue in this Complaint including all of the unlawful conduct alleged herein. At all times relevant to this Complaint, Defendant Thomas has had the authority to stop Defendants’ violations of the law.

Upon information and belief, Defendant ExpyFi, LLC is a Georgia limited liability company for which documents filed with the Georgia Secretary of State list the principal mailing address of ExpyFi, LLC as P.O. Box 390591, Snellville, Georgia 30039.

Upon information and belief, Defendant CreditMax Financial, LLC is a Georgia limited liability company for which documents filed with the Georgia Secretary of State list the principal office address of CreditMax Financial, LLC as 3570 Habersham at Northlake, Tucker, Georgia 30084.

Upon information and belief, Defendant Credit Phd., Inc. is a Georgia nonprofit corporation for which documents filed with the Georgia Secretary of State list the principal office address of Credit Phd., Inc. as 3560 Imperial Hill Drive, Snellville, GA 30039.

Upon information and belief, Defendant Thomas has conducted business under the following web site name and web address: www.expyfi.com.

Upon information and belief, the Internet website www.expyfi.com is operated and controlled by Defendant Thomas.

Defendant Anthony “Tony” Irving Thomas aka Anthony J. Thompson, Defendant ExpyFi, Defendant CreditMax, and Defendant Credit Phd. are collectively referred to herein as “Defendants.”

STATEMENT OF FACTS

Defendants have posted signs at Interstate exit ramps in Nashville and Memphis which state, “RAISE CREDIT SCORES to 700+ 1-800-852-8366.” *See* Affidavit of Jeremy Harwell, attached as Exhibit A to the State’s Motion for Temporary Injunction. A Google search on the Internet of this telephone number leads consumers to membership application forms provided by Defendants via the website, www.expyfi.com. Credit repair services are offered and sold via this website.

By calling the number, 800-852-8366, listed on the signs posted near Interstate exit ramps in Nashville and Memphis, consumers will get a recording listing upcoming free seminars hosted by Defendant Thomas. Defendant Thomas has conducted these seminars in Memphis and Nashville, and has offered and/or sold credit services to Tennessee consumers allegedly under the names of Defendant ExpyFi, Defendant CreditMax, and Defendant Credit Phd. At one such seminar, Defendant Thomas promoted, offered and sold approximately fifteen (15) credit repair

packages to consumers. *See* Affidavit of Jeremy Harwell, attached as Exhibit A to the State's Motion for Temporary Injunction.

Defendant Anthony "Tony" Thomas has not posted a bond and therefore is not authorized to provide credit services in the State of Tennessee.

Defendant ExpyFi, LLC has not posted a bond and therefore is not authorized to provide credit services in the State of Tennessee.

Defendant CreditMax Financial, LLC has not posted a bond and therefore is not authorized to provide credit services in the State of Tennessee.

Defendant Credit Phd., Inc. has not posted a bond and therefore is not authorized to provide credit services in the State of Tennessee.

ARGUMENT

I. DEFENDANTS HAVE ENGAGED IN CREDIT SERVICES WITHOUT REGISTERING A BOND WITH THE STATE OF TENNESSEE

Defendants have posted signs in at least Nashville and Memphis which offer to raise credit scores and list a telephone number. *See* Affidavit of Jeremy Harwell, attached as Exhibit A to the State's Motion for Temporary Injunction. Calling this telephone number provides consumers with a recording that lists upcoming seminars. *Id.* At these seminars, held in at least Nashville and Memphis, Defendant Thomas has offered and sold credit repair packages for an up-front fee prior to providing services. *Id.*

The Tennessee Credit Services Businesses Act, in order to provide a minimum degree of protection to consumers of credit services businesses, each credit services business shall post a bond of One Hundred Thousand Dollars (\$100,000.00) with the Tennessee Department of

Commerce and Insurance.⁴ The Tennessee Credit Services Businesses Act also provides that credit services business, and its salespersons, agents and representatives, and independent contractors who sell or attempt to sell the services of a credit services business, shall be prohibited from providing, in any manner, the services of a credit services business within Tennessee without registering a bond consistent with Tenn. Code Ann. § 47-18-1011.⁵

According to the Director of the Division of Consumer Affairs, who has custody and control over the Credit Services Business Registration program, none of the Defendants have registered a bond with the Tennessee Department of Commerce and Insurance. *See* Affidavit of Mary Clement, Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, attached as Exhibit B to the State's Motion for Temporary Injunction.

II. THE TEMPORARY INJUNCTION REQUESTED BY THE STATE IS APPROPRIATE UNDER TENN. CODE ANN. § 47-18-108

A. This Court Has the Authority to Grant the Requested Relief

The Attorney General of Tennessee has broad statutory and common law authority with respect to protecting the public.⁶ The Tennessee Supreme Court has held that “[a]s the chief law enforcement officer of the state, the attorney general may exercise such authority as the public interest may require and may file suits necessary for the enforcement of state laws and public protection.”⁷

⁴ Tenn. Code Ann. § 47-18-1011.

⁵ Tenn. Code Ann. § 47-18-1003(6).

⁶ Tenn. Code Ann. § 8-6-109(b)(1). *State ex rel. Inman v. Brock*, 622 S.W.2d 36, 41 (Tenn. 1981); *State v. Heath*, 806 S.W.2d 535, 537 (Tenn. Ct. App. 1991).

⁷ *State v. Heath*, 806 S.W.2d at 537.

Section 1010 of the Tennessee Credit Services Businesses Act states that a violation of the Tennessee Credit Services Businesses Act constitutes a violation of the Tennessee Consumer Protection Act.⁸ Furthermore, this provision states:

For the purposes of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act.⁹

Section 108 of the TCPA authorizes the Attorney General to bring an action, including a temporary injunction, in the name of the State whenever there is reason to believe a person has engaged in or is engaging in any act or practice declared unlawful by this part and the action is in the public interest.¹⁰

In cases such as this one, where a law enforcement authority acts as a “statutory guardian charged with safeguarding the public interest,” the standard for a temporary injunction is lower than the standard applied to private litigants.¹¹ The authorization to the Attorney General to seek injunctive and other equitable relief constitutes the legislative determination that an

⁸ Tenn. Code Ann. § 47-18-1010(a).

⁹ *Id.*

¹⁰ Tenn. Code Ann. § 47-18-108(a)(1).

¹¹ *State v. Roland Froehlig*, No. 33293 at 2, Ch. Ct. Of Tenn., 21st Jud. Dist. Williamson County (Mar. 2, 2007); *State v. Olomoshua*, No. 06C2912, at 2, Cir. Ct. of Tenn., 20th Jud. Dist, Davidson County, Part III (Nov. 14, 2006); *Tennessee Real Estate Comm’n v. Hamilton*, No. 96-3330-III, at 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff’d*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998); *FTC v. Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634 (M.D. Tenn. Aug. 18, 2005); *Microsoft Corp. v. Action Software*, 136 F.Supp. 2d 735, 738-39 (N.D. Ohio 2001); *see also The Virginia Beach SPCA, Inc. v. South Hampton Roads Veterinary Ass’n.*, 329 S.E.2d 10, 13 (Va. 1985); *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2nd Cir. 1975); *FTC v. World Wide Factors*, 882 F.2d 344, 346 (9th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

irreparable injury has already occurred in any violation of the Act.¹² “Unlike private actions, which are rooted in the equity jurisdiction of the courts, in suits based upon statutory authority, proof of irreparable harm or the inadequacy of other remedies is not required.”¹³ The U.S. District Court for the Middle District of Tennessee has also held, “[w]here a government entity demonstrates a substantial showing of a violation of a statute, such violation is sufficient to establish immediate and irreparable harm.”¹⁴ Irreparable injury, therefore, need not be shown¹⁵ and harm to the public is presumed.¹⁶ “The standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief.”¹⁷

¹² 11 Wright & Miller, *Federal Practice and Procedure*, 461-62 (1973).

¹³ *Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005)(internal citations omitted); *see also State v. Olomoshua, et al*, No. 06C2912, at 2, Cir. Ct. of Tenn., 20th Jud. Dist, Davidson County, Part III (Nov. 14, 2006); *State v. Continental Distributing Co., Inc.*, Ch. Ct. of Tenn., 11th Jud. Dist., Hamilton County (Oct. 7, 1994).

¹⁴ *Tennessee Real Estate Comm'n v. Hamilton*, No. 96-3330-III, p. 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff'd*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998).

¹⁵ *State v. Continental Distributing Co., Inc.*, Ch. Ct of Tenn., 11th Jud. Dist., Hamilton County (Oct. 7, 1994); *SKS Merch., LLC v. Barry*, 233 F.Supp.2d 841, 845 (E.D. Ky. 2002); *FTC v. Int'l Computer Concepts, Inc.*, No. 594CV1678, 1994 WL 730144 at *12 (N.D. Ohio Oct. 24, 1994); *World Travel Vacation Brokers*, 861 F.2d at 1029. *see also People, ex rel. Hartigan v. Stianos*, 475 N.E.2d 1024, 1027-28 (Ill. App. 1985); *State v. Fonk's Mobile Home Park & Sales*, 343 N.W.2d 820, 821 (Wis. App. 1983); *State ex rel Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 370-71 (Mo. App. 1973); *United States v. Sene X Eleemosynary Corp.*, 479 F.Supp. 970, 980-81 (S.D. Fla. 1979).

¹⁶ *FTC v. Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005) (internal citations omitted); *see also, Hecht Co. v. Bowles*, 321 U.S. 321, 331 (1944); *World Travel Vacation Brokers*, 861 F.2d at 1029.

¹⁷ *Bowles*, 321 U.S. at 331.

In the ordinary case, traditional equitable injunctions require that the trial judge's discretion balance four factors which are not prerequisites to be met.¹⁸

The most common description of the standard for a preliminary injunction in federal and state courts is a four-factor test: (1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendants; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.¹⁹

Tenn. R. Civ. P. 65.04 states the standard for the issuance of a temporary injunction is if:

[I]t is clearly shown by a verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment . . . or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

A case such as this one is especially well-suited for a temporary injunction. Section 108 of the TCPA provides that "[t]he courts are authorized to issue orders and injunctions to restrain and prevent violations of this part,"²⁰ and courts have consistently imposed temporary injunctions where, as here, there is evidence of widespread and pervasive deception and unlawful activity.²¹

¹⁸ *Frisch's Restaurant, Inc. v. Shoney's, Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985).

¹⁹ *South Cent. R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 (Tenn. Ct. App. 2000), *perm. app. denied* (quoting Banks & Entman, TENNESSEE CIVIL PROCEDURE § 4-3(1) (1999)); *Tesmer v. Granholm*, 333 F.3d 683, 702 (6th Cir. 2003) (reversed on other grounds); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) (citing only two components: "the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits.").

²⁰ Tenn. Code Ann. § 47-18-108(a)(4).

²¹ See also *World Travel Vacation Brokers*, 861 F.2d at 1026-28; *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984); *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 907 (7th Cir. 1989); *FTC v. Amy Travel Service*, 875 F.2d 564, 571-72 (7th Cir. 1989); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 718-19 (5th Cir. 1982).

B. The Evidence Presented Justifies Entry of a Temporary Injunction

The State has submitted compelling evidence which establishes that Defendants have engaged in credit services without registering a bond with the State as required by statute.

1. The State Has Demonstrated a Likelihood of Success on the Merits

As evidenced by the Statement of Facts in Part I of this memorandum and the Affidavits attached as Exhibits A and B to the State's Motion for a Temporary Injunction, the State has demonstrated a likelihood of success on the merits with regard to its claim arising under the Tennessee Credit Services Businesses Act.

For purposes of the temporary injunction hearing, Tennessee state courts,²² federal courts,²³ and the Tennessee Rules of Civil Procedure²⁴ all allow for the admittance of affidavits over hearsay objections. Tenn. R. Civ. P. 65.04 expressly allows for the use of a "verified complaint, affidavit, or other evidence." The affiant of the Affidavit swears or affirms that the facts he or she has stated are the truth or are truthful to the best of his or her knowledge.

2. The Balance of Equities Mandates a Temporary Injunction

The balance of equities mandates temporary injunctive relief. Where, as here, public and private equities are at issue, public equities far outweigh private equities.²⁵

²² *Denver Area Meat Cutters and Employers Pension Plan v. Clayton*, 120 S.W.3d 841, 857 (Tenn. Ct. App. 2003).

²³ *See, e.g., Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *2.

²⁴ Tenn. R. Civ. P. 65.04 (2) ("A temporary injunction may be granted during the pendency of an action if it is clearly shown by *verified complaint, affidavit* or other evidence that the movant's rights are being or will be violated by an adverse party. . . .").

²⁵ *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989).

Defendants' past misconduct "gives rise to the inference that there is a reasonable likelihood of future violations."²⁶ Further, Defendants can have no vested interest in a business activity that is unlawful.²⁷ Here, without the entry of the proposed temporary injunction, Defendants will likely continue to offer and engage in credit services without properly registering a bond with the State.

Past misconduct is "highly suggestive of the likelihood of future violations," especially where, as here, there is a pattern of unlawful conduct as opposed to an isolated occurrence.²⁸

CONCLUSION

The State has demonstrated a substantial likelihood of success on the merits of its claim that Defendants have engaged in credit services in Tennessee and on behalf of Tennessee consumers without first registering a bond with the State as required by statute.

This Court has the ability to temporarily enjoin Defendants to prevent further conduct from occurring during this action. The temporary injunction is in the public interest and should issue following a full hearing.

This is the first application by the Plaintiff, the State of Tennessee, for extraordinary relief.

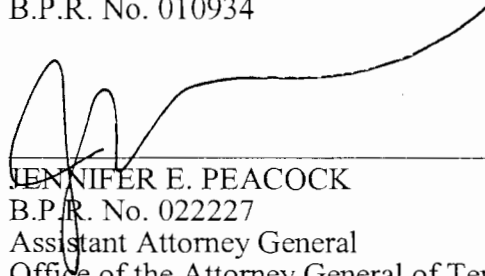
²⁶ *SEC v. R. J. Allen & Assoc., Inc.*, 386 F.Supp. 866, 877 (S.D. Fla. 1974); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979) ("Once a violation is demonstrated, the moving party need only show that there is some reasonable likelihood of future violations.") (citations omitted).

²⁷ *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972).

²⁸ *Commodity Futures Trading Comm. v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General & Reporter
B.P.R. No. 010934

A handwritten signature in black ink, appearing to read 'JENNIFER E. PEACOCK', is written over a horizontal line.

JENNIFER E. PEACOCK
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CERTIFICATE OF SERVICE

I, Jennifer E. Peacock, do hereby certify that the foregoing document was served on Defendants via facsimile to (800) 852-8366 and (770) 939-1165 and via United States Mail to:

Anthony Thomas
P.O. Box 390591
Snellville, GA 30039

ExpyFi, LLC
Anthony Thomas, Registered Agent
P.O. Box 390591
Snellville, GA 30039

CreditMax Financial, LLC
Anthony Thomas, Registered Agent
3570 Habersham at Northlake
Tucker, Georgia 30084

Credit Phd., Inc.
Anthony Thomas, Registered Agent
P.O. Box 390591
Snellville, GA 30039

on this the 19th day of November, 2007.



JENNIFER E. PEACOCK
Assistant Attorney General